

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GEORGE L. JOHNSON,	§
	§ No. 398, 2009
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 9806010948
	§
Plaintiff Below-	§
Appellee.	§

Submitted: September 11, 2009

Decided: October 2, 2009

Before **HOLLAND, BERGER** and **JACOBS**, Justices

**ORDER**

This 2<sup>nd</sup> day of October 2009, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, George L. Johnson, filed an appeal from the Superior Court's June 23, 2009 order denying his second motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior

Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.<sup>1</sup> We agree and affirm.

(2) In September 1999, Johnson was found guilty by a Superior Court jury of Attempted Murder in the First Degree and Possession of a Firearm During the Commission of a Felony. He was sentenced to a total of 35 years of Level V incarceration, to be suspended after 25 years for decreasing levels of supervision. This Court affirmed Johnson's convictions on direct appeal.<sup>2</sup> In 2002, Johnson filed his first motion for postconviction relief, in which he argued that his due process rights were violated when the Superior Court, first, denied his motion for a continuance so that three alibi witnesses could be located and, second, admitted evidence at trial of the extent of the victim's injuries. Johnson also claimed that the amenability process was violated when his case was not transferred to Family Court and that his counsel provided ineffective assistance by not advising him of his amenability claim. Johnson did not appeal the Superior Court's denial of his first postconviction motion.

(3) In this appeal from the Superior Court's denial of his second postconviction motion, Johnson claims that a) the Superior Court lacked the authority to try and convict him without first conducting an amenability

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<sup>1</sup> Supr. Ct. R. 25(a).

<sup>2</sup> *Johnson v. State*, Del. Supr., No. 569, 1999, Walsh, J. (Sept. 20, 2000).

hearing; b) the Superior Court lacked the authority to admit evidence of his prior juvenile firearm adjudication at trial; and c) the prosecutor engaged in misconduct in his closing argument and rebuttal.

(4) When considering a postconviction motion under Rule 61, the Superior Court must first apply the procedural requirements of the Rule before reaching the merits of the petitioner's claims.<sup>3</sup> Here, Johnson's conviction became final in 2000, more than three years before he filed his latest motion in April 2009. As such, his claims are time-barred pursuant to Rule 61(i)(1). Moreover, Johnson's amenability claim is barred as formerly adjudicated under Rule 61(i)(4) because it was previously raised in his first postconviction motion and his two remaining claims are procedurally barred under Rule 61(i)(2) because they were not raised in his first postconviction motion. In the absence of any evidence that the procedural bars should not be applied in the interest of justice,<sup>4</sup> the Superior Court's denial of Johnson's second motion for postconviction relief must be affirmed.

(5) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

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<sup>3</sup> *Flamer v. State*, 585 A.2d 736, 745 (Del. 1990).

<sup>4</sup> Super. Ct. Crim. R. 61(i)(2), (4) and (5).

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger  
Justice